

\*\*E-filed 5/31/07\*\*

NOT FOR CITATION  
 IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12	SCOTT STEARNS,	)	No. C 07-1074 JF (PR)
13	Plaintiff,	)	
14	vs.	)	ORDER GRANTING
15		)	PLAINTIFF'S MOTION TO
16	CALIFORNIA DEPARTMENT OF	)	DISMISS; DENYING
17	CORRECTIONS AND	)	PLAINTIFF'S MOTION TO
18	REHABILITATION, et al.,	)	PROCEED IN FORMA
	Defendants.	)	PAUPERIS AS MOOT; NO
		)	FILING FEE IS DUE
		)	
		)	(Docket Nos. 2, 3)

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. On April 30, 2007, Plaintiff filed a motion to dismiss the instant case requesting that the Court dismiss the case and not require Plaintiff to pay the filing fee.

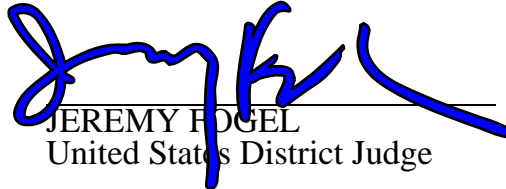
A plaintiff has the absolute right to dismiss his or her action by filing a notice of dismissal "at any time before service by the adverse party of an answer or of a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(i). Said dismissal may be with or without prejudice, but unless plaintiff's notice of dismissal states otherwise, it is deemed to be "without prejudice." See Fed. R. Civ. P. 41(a)(1);

1 Humphreys v. United States, 272 F.2d 411, 412 (9th Cir. 1959).

2 Plaintiff's motion to dismiss (docket no. 3) is GRANTED. The instant civil rights  
3 action is DISMISSED without prejudice. Based upon this dismissal, Plaintiff's pending  
4 motion to proceed in forma pauperis (docket no. 2) is DENIED as moot. No filing fee is  
5 due. The Clerk shall terminate all pending motions and close the file.

6 IT IS SO ORDERED.

7 DATED: 5/31/07

  
JEREMY FOGEL  
United States District Judge

1 A copy of this ruling was mailed to the following:

2 Scott Stearns  
3 J-61801  
4 Pelican Bay State Prison  
5 P.O. Box 7500  
6 Crescent City, CA 95532-7500  
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